

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MC ALLEN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO: 7:16-CR-00876-9
	)	
Plaintiff,	)	CRIMINAL
	)	
vs.	)	McAllen, Texas
	)	
RODRIGO ROMAN,	)	Thursday, September 14, 2017
	)	
Defendant.	)	(10:07 a.m. to 10:31 a.m.)

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SENTENCING

BEFORE THE HONORABLE RANDY CRANE,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff:	PATRICIA PROFIT, ESQ. Assistant United States Attorney 1701 W. Business Hwy. 83 Suite 600 McAllen, TX 78501
For Defendant:	STEPHEN F. HALL, ESQ. Law Office of Damon M. Cheronis 140 S. Dearborn, Suite 411 Chicago, IL 60603
U.S. Probation:	Cris Corona
Court Interpreter:	Elena Medrano
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transcript produced by transcription service.

1 McAllen, Texas; Thursday, September 14, 2017; 10:07 a.m.

2 (Call to Order)

3 (Official Interpreter Utilized for Translation)

4 THE COURT: All right, next M-16-CR-876-9, U.S.A.  
5 *versus Rodrigo Roman.*

6 MS. PROFIT: The Government is present and ready.

7 MR. HALL: Good morning, Stephen Hall for Rodrigo  
8 Roman. He's present and ready.

9 THE COURT: All right. Mr. Roman, there was a  
10 presentence report prepared about you and your case as well.  
11 Did you get a chance to review this report with your lawyer?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you have any questions about it that  
14 your lawyer could not answer?

15 THE DEFENDANT: No.

16 THE COURT: And was everything correct about you in  
17 the presentence report? Biographically, I know you may  
18 disagree with some of the facts attributed to you.

19 THE DEFENDANT: Yes.

20 THE COURT: All right. So here we also have the  
21 third acceptance point for responsibility. The Government  
22 would move for that?

23 MS. PROFIT: Yes, your Honor.

24 THE COURT: Which I grant.

25 Anything you'd like to add on your client's behalf?

1           **MR. HALL:** Just to be clear, Judge, I think there was  
2 no points for acceptance. So it would not just be a third  
3 additional. It'd be the two plus the one.

4           **THE COURT:** All right. Did you submit an acceptance  
5 letter? I mean, why wasn't he given the --

6           **MR. HALL:** I think through the plea and then also  
7 through our sentencing memorandum, he very clearly accepted  
8 responsibility. I just had not sent in an acceptance letter to  
9 the Probation office which would include the issue.

10          **THE COURT:** Signed by your client.

11          **MR. HALL:** Correct.

12          **THE COURT:** I mean, he needs to -- if he's not going  
13 to talk about it -- but since I know he did -- he met and  
14 confessed his involvement in this to the Government, I'm going  
15 to grant all three points off here this morning. So what's  
16 driving his sentence is the weapons. You -- why don't we talk  
17 about them together? One is academic if he's held responsible  
18 for the weapons that were found in his home. Did you want to  
19 argue that they were unrelated to this drug-trafficking  
20 offense?

21          **MR. HALL:** I absolutely do, Judge.

22          **THE COURT:** I mean, I know it's --

23          **MR. HALL:** Do you want to start with -- I think --

24          **THE COURT:** The sawed-off shotgun or the one with the  
25 silencer, which gun do you want to start with?

1           **MR. HALL:** Well, the question that I have for your  
2 Honor is I believe that the Government has suggested that he  
3 may be safety valve eligible. So would you like me to start  
4 with the enhancement for the safety valve?

5           **THE COURT:** Yes. No, I --

6           **MS. PROFIT:** We did meet with him.

7           **THE COURT:** Yeah, he otherwise safety valve qualified  
8 but for the weapon.

9           **MR. HALL:** Okay.

10          **MS. PROFIT:** Right. We met with him. We felt that  
11 he was --

12          **THE COURT:** Truthful.

13          **MS. PROFIT:** -- truthful in terms of his involvement  
14 and, you know, it -- we think that he was truthful.

15          **THE COURT:** All right. So, therefore, let's talk  
16 about the weapon --

17          **MR. HALL:** Yes, Judge. So regarding --

18          **THE COURT:** -- weapons.

19          **MR. HALL:** -- the enhancement, obviously the two-  
20 point enhancement brought under Sentencing Guideline Section  
21 2D1.1 and I think what is important there is the notes  
22 following 2D1.1 which -- and I'll quote the commentary. "The  
23 enhancement should be applied if the weapon is  
24 present unless it is clearly improbable that the  
25 weapon was connected to the offense. For example,

1           the enhancement would not be applied to the Defendant  
2           arrested at Defendant's residence, an unloaded  
3           hunting rifle in the closet."

4           **THE COURT:** All right.

5           **MR. HALL:** Now, I'm not suggesting that the guns in  
6           the safe were an unloaded hunting rifle although they were  
7           unloaded.

8           I'd like to deal with the shotgun first. It sounds  
9           terrible to say that he had a sawed-off shotgun in his basement  
10          but one thing that I think is very important with regard to  
11          that shotgun is that it was, number one, unloaded and, number  
12          two, there were no shells found anywhere in the house or around  
13          the property for that gun. In other words, that gun was  
14          inoperable. He could not have used it if he wanted to. It  
15          would not appear inoperable and from my understanding, it  
16          actually appeared to be a rusted-out old sawed-off shotgun  
17          although I've not seen pictures of it. But I do think it was  
18          very important to look at the idea that, well, it's not loaded.  
19          That's one thing but if there aren't even shells for it  
20          anywhere on the property, that's a whole other thing.

21          I mean, there is case law to suggest that, you know,  
22          an unloaded firearm does not -- it's not dispositive of the  
23          issue. It doesn't bar the application but it doesn't  
24          necessitate it either. So I think that's a very important  
25          point as to that shotgun.

1           With regard to the firearms that were located  
2 upstairs in the office, they were, in terms of the house,  
3 separated from the currency that was located on top of the  
4 refrigerator on the main floor. There were no drugs found  
5 inside the house. They were actually found in vehicles outside  
6 the home.

7           But these two firearms, one of which counsel has  
8 stated was given to my client by Mr. Omar Vasquez -- and I'll  
9 talk about that relationship here in a moment -- they were  
10 locked away in a safe. Those two were unloaded. There were  
11 bullets for them in that safe but just speaking from  
12 experience, when I have clients who are very clearly using  
13 their weapons to protect their drugs or their money, they don't  
14 lock them away in a safe upstairs with no bullets in them.

15           And to be clear, these are semiautomatic guns that  
16 require a magazine to be loaded. It's not simply putting  
17 bullets in a revolver. So it would take --

18           **THE COURT:** Well, but the magazines are loaded. It's  
19 a matter of just sliding it in. It's a one-step very quick and  
20 easy. It's not like a revolver where you're trying to stick  
21 eight individual, I assume, right?

22           **MR. HALL:** My understanding was that nothing was  
23 loaded, that the bullets were in the box and that these guns  
24 were completely unloaded. That was my understanding and, you  
25 know, correct me if I'm wrong.

1           **THE COURT:** And he didn't have loaded magazines there  
2 in the safe as well? I mean, that would be typical. That's  
3 why I'm curious. I'm trying to pull that up right now.

4           **MR. HALL:** From the evidence I've seen, it doesn't  
5 say one way or the other. My understanding from reviewing the  
6 evidence was that it was just completely unloaded and the  
7 agents were pretty thorough. I would have thought that I would  
8 have seen that there were loaded magazines or something to that  
9 effect in that same.

10           Judge, but from my perspective, you know, similar to  
11 the shotgun in the basement that could not have been fired if  
12 anyone wanted to or the firearms in the safe upstairs that were  
13 locked away that were not loaded, they were not located next to  
14 or near the currency and certainly not next to or near the  
15 cocaine that was located in the vehicles out front.

16           It's very different from the situation that we  
17 encounter where the person trying to protect their currency or  
18 their drugs have a loaded weapon right next to them because  
19 it's obvious that they are using that weapon for that purpose.  
20 Mr. Roman has indicted to me at least that he was truly using  
21 that firearm for home defense and not in the sense of defending  
22 the currency or the cocaine but because he lived in a very  
23 high-crime area with a lot of gangs.

24           I did pull some *Chicago Tribune* articles from around  
25 the time that Mr. Roman was arrested that indicate that stray

1 bullets killed a boy a block from Mr. Roman's house. The FBI  
2 did a massive raid in the Melrose Park neighborhood that summer  
3 and arrested 34 Latin King members. In sum, the gang violence  
4 was extreme and he was worried about his family, not the  
5 currency that other people were giving him.

6 So to that extent, I would liken to the --  
7 essentially the carve-out in Section 2D1.1 where the unloaded  
8 hunting rifle in the residence should not be considered.

9 **THE COURT:** All right. I'm still trying to pull up  
10 the paragraph that describes the weapons. Whose PSI was this?  
11 Ms. Corona, you again? The weapon paragraph --

12 **MR. HALL:** Judge, I can actually tender to your Honor  
13 for review the agent's notes on this matter if there's no  
14 objections.

15 **THE COURT:** Well, the Probation office will put  
16 together multiple agents' notes. I mean -- or they may even  
17 just have seen a picture and use that as their source. So I  
18 don't know --

19 **U.S. PROBATION OFFICER CORONA:** In this case, your  
20 Honor, aside from the discovery, it was my interview with the  
21 agent from Chicago who was actually there for the seizure,  
22 Agent Cantapalips (phonetic) --

23 **THE COURT:** Uh-huh.

24 **U.S. PROBATION OFFICER CORONA:** -- who advised me of  
25 the types of weapons and that there was ammunition there.



1           **MR. HALL:** And we're certainly not disputing that  
2 there was Type 380 ammunition for the guns in the safe.

3           **THE COURT:** Now, he lived in the home with his wife  
4 and small children as well, correct?

5           **MR. HALL:** Correct.

6           **THE COURT:** Which, again, is important that these  
7 guns were locked away.

8           **U.S. PROBATION OFFICER CORONA:** It was Paragraph 55,  
9 your Honor.

10          **THE COURT:** Okay.

11          **MR. HALL:** Is that the revised?

12          **THE COURT:** I'm only looking at the revised. I don't  
13 get access to any -- that's not true. I don't get access to  
14 all prior presentence reports but I always look at the latest  
15 one. It doesn't really speak of any -- it doesn't even address  
16 the ammunition. But I -- again, you say it was there. I mean,  
17 it was there. It's in a safe because you have kids but these  
18 are tools of the trade, like you said, or used to defend the  
19 house. Well, they're used to defend the house because the  
20 house has bulk currency. Let's see, there was \$400,000 on this  
21 occasion -- \$399,850.

22          **MR. HALL:** I believe the --

23          **THE COURT:** That was in the --

24          **MR. HALL:** -- amount from his home was a little over  
25 \$40,000.

1           **MS. PROFIT:** This was -- no, this was not the massive  
2 money amount, your Honor.

3           **THE COURT:** Okay. This was --

4           **MS. PROFIT:** The 399,850 had been taken in February  
5 3rd, 2011.

6           **THE COURT:** So this was a much --

7           **MS. PROFIT:** A much smaller amount of money that was  
8 recovered at that time.

9           **THE COURT:** What was his address? Was he the North  
10 Memorial address?

11           **MR. HALL:** He was on the North 33rd Street in Melrose  
12 Park, Judge.

13           **THE COURT:** North 33rd Street.

14           **MS. PROFIT:** There was more that was found with Jose  
15 and Moises, your Honor. It was a large duffle bag of cash that  
16 was found with them.

17           **THE COURT:** All right, I see that. That's --

18           **MR. HALL:** And so, Judge, just to reiterate the  
19 point, there is good Fifth Circuit case law that says that it's  
20 not a dispositive matter if the gun is unloaded and obviously  
21 the converse of that would be true. It's not a mandate that  
22 you find this enhancement applies because the gun is loaded or  
23 not loaded.

24           **THE COURT:** I mean, the guns are -- I told you  
25 they're presumed to -- if they're in their possession, presumed

1 to be used in connection with these drug-trafficking activities  
2 and I've just -- I don't -- I find you have not overcome that  
3 presumption. I believe that these weapons loaded and unloaded  
4 with ammunition, without were being used for facilitation of  
5 drug-trafficking activities, including the defense of these  
6 drugs and drug proceeds that were commonly at the residence.  
7 So that's how I come out factually on that.

8 **MR. HALL:** So as to the enhancement, would your  
9 Honor's application of that come out the same for the safety  
10 valve eligibility?

11 **THE COURT:** Yeah, that he -- no, that he actually  
12 possessed them. So he's disqualified from safety valve as a  
13 consequence of my finding.

14 **MS. PROFIT:** I think that -- then that that may bring  
15 the question of how they came to be with him.

16 **MR. HALL:** And, Judge, I appreciate that point. It  
17 is important that as Ms. Profit pointed out earlier, it's my  
18 understanding that both the shotgun and at least the firearm  
19 and silencer were given to him by Mr. Omar Vasquez and he was  
20 told to hold on to them, Judge.

21 As to the other firearm, that was a validly  
22 registered, owned firearm in the state of Illinois and  
23 different than many states, in Illinois, you have to actually  
24 apply with the Illinois State Police Firearms Services Bureau  
25 for a -- they call them a "FOI card," Firearm Owner's

1 Identification card. So they do a background check on you.  
2 They vet you. They determine whether they think you should be  
3 eligible to own a firearm and then when you do purchase a  
4 firearm, you must register it with the Illinois State Police.

5 **THE COURT:** And this was registered to him?

6 **MR. HALL:** So the one firearm that he had that was  
7 legal that was not given to him by someone else, the one that  
8 he purchased for his home defense that was unloaded inside the  
9 safe was registered with the Illinois State Police. It was a  
10 valid firearm that he was lawfully entitled to own. Again --  
11 and I hate to belabor the point but I don't have a lot of  
12 clients that have drugs and money and valid firearms that they  
13 keep in a safe unloaded, you know, that then connected with  
14 those drugs or that currency.

15 **THE COURT:** I'm not following you. I mean, I think  
16 they are connected. They happen to have been in the safe at  
17 the time because he's not leaving them laying around in a home  
18 with children who would have access to them but it is not  
19 uncommon that the Court sees people who are -- who have  
20 permission and valid permits legally carrying the weapons that  
21 they have and involved in drug trafficking. I mean, it's --  
22 just because he went through a legal means of getting the  
23 weapon doesn't mean that it was not being used for illegal  
24 purposes, you know. And that's a non sequitur to me. I don't  
25 -- is that what you were sort of implying is why would somebody

1 validly buy a gun and then use it for illegal purposes?

2           **MR. HALL:** Yeah, I guess, Judge. I think that in  
3 part you are -- especially in Illinois, especially in Chicago,  
4 you are drawing attention to yourself in the fact you own  
5 firearms.

6           **THE COURT:** Well, it's fairly -- down here it's  
7 pretty common. People go to Academy and buy assault weapons  
8 and then use them in drug-trafficking crimes.

9           **MR. HALL:** Absolutely but I'd have to, you know,  
10 respectfully say that it's a very, very different situation in  
11 Chicago. Gun ownership is extremely strict up there,  
12 especially within the city limits. And so if anything,  
13 Mr. Roman is drawing more attention to himself by having a  
14 legal, valid firearm than anything else. That seems to me to  
15 be opposite of what you want to do if you are going to be  
16 trafficking.

17           **THE COURT:** I agree and I scratch my head how he got  
18 one given his arrest for mob action and an assault but, I mean,  
19 I don't know how strict the vetting process is.

20           **MR. HALL:** I think they looked at convictions, not  
21 the -- not dismissals, Judge.

22           **THE COURT:** So he had no criminal convictions and was  
23 able to get one. That doesn't sound like a very strict  
24 requirement. Is -- I don't see that there's anything more than  
25 what's required by the Federal regulations, I mean, if that's

1 all Chicago requires is that you have no convictions?

2           **MR. HALL:** You know, I couldn't state to exactly what  
3 the Illinois State Police does to vet but I do know that it is  
4 relatively strict requirement and that's why most people don't  
5 have FOI cards -- or that's one reason perhaps why most people  
6 don't have FOI cards. But, again, I would point your Honor  
7 also to the other -- and I think it's a very valid reason for  
8 him to have the valid firearm that he did have which is the  
9 gang violence in the neighborhood.

10           Only a couple of months after he was arrested, a boy  
11 was shot by stray bullets from gang gunfire and killed a block  
12 from his home. Mr. Roman had two windows shot out of his house  
13 in the upstairs unrelated to anything in this case. It was  
14 stray bullets from gang gunfire. There are numerous -- dozens  
15 of Latin King and other gang member arrests in the same  
16 neighborhood during the same time period and I think it is a  
17 perfectly legitimate reason when Mr. Roman says they use them  
18 for self-defense that he means the gang violence in the  
19 neighborhood, not the money above his refrigerator.

20           **THE COURT:** All right. And I have no doubt he used  
21 it for his defense against potential criminal elements in the  
22 neighborhood as well but I also believe that they were -- he  
23 had them because he was involved in drug trafficking, two of  
24 them having been gifted to him by Omar Vasquez, a Co-defendant  
25 with whom he was involved in drug trafficking and, again,

1 they're presumed to be and I do not believe that you have  
2 overcome that presumption.

3 **MS. PROFIT:** I'm not sure if he would characterize it  
4 as it was gifted to him. I think that they're -- I'm just  
5 saying that --

6 **THE COURT:** Or lent to him, whatever, he was holding  
7 them for him.

8 **MS. PROFIT:** Because I don't want that to -- I'm  
9 saying that I think that he was asked to hold it which is  
10 different than being gifted to him --

11 **MR. HALL:** Right.

12 **MS. PROFIT:** -- or actually given to him for his  
13 possession. And certainly he probably regrets that he agreed  
14 to do it at this point in time, you know. I mean, I'm just  
15 saying that, you know --

16 **MR. HALL:** Certainly. And, Judge, that is a good  
17 characterization that I appreciate being made. He was not  
18 intending to keep these forever. The understanding was that he  
19 would be giving them back at some point with the exception of  
20 the valid firearm.

21 **THE COURT:** All right. I mean, again, unfortunate  
22 that he made these choices given his extensive drug-trafficking  
23 activities and that these weapons are tools of the trade and  
24 the presumption they were being used in connection therewith  
25 and all the circumstances surrounding these events, I believe

1 it is more likely than not they were connected to drug-  
2 trafficking activities and secondarily the defense of his home  
3 from the Latin Kings in the neighborhood.

4 All right. So your objection is noted. I just  
5 factually find against you on this which obviously does affect  
6 his sentence although not significantly. It's a 12-month  
7 difference in his sentence.

8 Mr. Roman, you get to speak this morning as well. If  
9 there's anything you'd like for me to consider, now is your  
10 chance to speak.

11 **THE DEFENDANT:** Yes, your Honor. Before anything  
12 else, I want to apologize. I want to say I'm remorseful. I  
13 know what I did was wrong. I never thought of the magnitude of  
14 this. I'm remorseful for my actions. I feel guilty of what  
15 I'm being charged for. I'm remorseful. I really miss my  
16 family. I have not seen them in one and the truth is I feel  
17 guilty and I know I have to pay for this. I ask you to  
18 consider that I have a good record. I was never in trouble. I  
19 don't have any criminal record, no domestic violence record, no  
20 gang affiliations. I've been a good member of my community. I  
21 go to church. I don't know whether the Court read the letters  
22 that my pastor wrote. I ask you to consider all this.

23 **THE COURT:** I did review all the letters that were  
24 submitted on your behalf and, again, as is common, you know,  
25 you seem to have two complete different sides of yourself, you



1 know, one obviously involved in -- heavily in drug trafficking  
2 and then you have your normal, sort of family life that you're  
3 able to maintain at the same time and I guess those are the  
4 witnesses who sent in letters were those who saw only that side  
5 of your life.

6 And I did misspeak a moment ago. It's not a 12-month  
7 difference. It's a 33-month difference, his lack of qualifying  
8 for safety valve because then he would have gotten the two  
9 points off. I forgot to account for that a moment ago.

10 Does the Government have anything they want to add?

11 **MS. PROFIT:** The Defendant was very truthful when we  
12 met with him and in terms of his truthfulness and stuff, I  
13 think he was impressive in his sincerity in terms of how he had  
14 involved himself in this and there were regrets that he had for  
15 involving himself in this but he was very easy to deal with  
16 which considering that we've had so many individuals that have  
17 not been easy to deal with, this is something that the  
18 Government appreciates, his veracity, his truthfulness and his  
19 honesty.

20 **THE COURT:** All right. I'll consider that. The  
21 Court adopts the factual findings contained within the  
22 Presentence Report. I find it correctly scored. However, I do  
23 grant all three points off for acceptance. That drops him to a  
24 31 which would be a range of 108 to 135 but for the mandatory  
25 minimum, the actual range is 120 and 135 months and given that

1 he has no criminal history. I considered those factors under  
2 18 U.S.C. 3553(a) and conclude that a sentence within these  
3 guidelines satisfies them and, therefore, pursuant to The  
4 Sentencing Reform Act of 1984, it is the judgment of the Court  
5 the Defendant is committed to the custody of the Bureau of  
6 Prisons to be in prison for a term of 120 months and I'm going  
7 on the low end because of what the Government mentioned about  
8 Mr. Roman.

9           Upon release from imprisonment, the Defendant is  
10 placed on supervision for five years which is also mandatory  
11 and while on supervision, the Defendant is not commit any  
12 Federal, State or local crimes. He is to comply with the  
13 standard conditions adopted by this Court and abide by any  
14 mandatory conditions required by law. In addition, he's not to  
15 possess a firearm or destructive device. He is to cooperate in  
16 providing a DNA sample. If deported during supervision -- I'm  
17 sorry. He's a U.S. citizen, I have here, right?

18           **MR. HALL:** Yes, Judge.

19           **THE COURT:** So I find the Defendant can no longer  
20 afford to pay a fine. So I waive the fine in this case but he  
21 is assessed a 100-dollar special assessment which is payable  
22 immediately. Are there any special programming needs that he  
23 needs?

24           **MR. HALL:** Your Honor, you were addressing the  
25 Government, but Mr. Roman does have some health concerns that

1 are addressed in the PSI and so just -- I would request that he  
2 be sent to a facility somewhere near the city of Chicago, to  
3 the best you can recommend that. It also has some programs  
4 that can address those healthcare needs.

5 **THE COURT:** All right. I was curious more whether he  
6 had a substance abuse issue.

7 **U.S. PROBATION OFFICER CORONA:** No, your Honor, just  
8 maybe possibly an educational program. I know he did --

9 **THE COURT:** All right. So I'll recommend that he be  
10 placed in a facility closest to his home in the Chicago area.

11 **MR. HALL:** We'd also ask for the residential drug  
12 treatment program.

13 **THE COURT:** All right. I mean, that's what I was  
14 sort of inquiring of. The Court will recommend also that he be  
15 placed in a facility where he can receive the benefit of the  
16 RDAP program.

17 This is your sentence, Mr. Roman. You can appeal it.  
18 You have two weeks to do so. If you cannot afford the cost of  
19 an appeal, you could ask that I waive these costs of an appeal.

20 Are there remaining counts?

21 **MS. PROFIT:** The Government would move -- I don't  
22 think the Government -- there is no remaining counts. It think  
23 he just was one count.

24 **THE COURT:** All right. To the extent there were any  
25 other counts, just to be safe, the Court dismisses them at this

1 time.

2 All right. So, Mr. Roman, hopefully you'll be placed  
3 in a facility back in the area of your family. If you complete  
4 this program -- this drug program, it will take a year off of  
5 your sentence and it will also mean that the last six months of  
6 your sentence will be in a halfway house or in home  
7 confinement, depending on bed space primarily. And so I hope  
8 you'll take that program seriously as it'll benefit you  
9 substantially. Best of luck to you, sir, and you're excused at  
10 this time.

11 MR. HALL: Thank you, Judge.

12 THE COURT: All right.

13 (This proceeding adjourned at 10:31 a.m.)  
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



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Signed

October 25, 2017

Dated

*TONI HUDSON, TRANSCRIBER*